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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, individually and  
 on behalf of all similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**JOINT SUBMISSION RE: SEALING  
 PORTIONS OF AUGUST 5, 2022 ORDER  
 ON (1) GOOGLE'S ADMINISTRATIVE  
 MOTIONS FOR EXTENSION/  
 CLARIFICATION OF PRESERVATION  
 PLAN ORDERS AND (2) CALHOUN  
 PLAINTIFFS' MOTION FOR  
 CLARIFICATION OF PRESERVATION  
 PLAN ORDER (DKT. 657)**

Referral: Hon. Susan van Keulen, USMJ

1 August 15, 2022

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen  
4 San Jose Courthouse  
5 Courtroom 6 - 4th Floor  
6 280 South 1st Street  
7 San Jose, CA 95113

8 Re: Joint Submission Re: Sealing Portions of the August 5, 2022 Order on (1) Google's  
9 Administrative Motions for Extension/Clarification of the Preservation Plan Orders  
10 and (2) *Calhoun* Plaintiffs' Motion for Clarification of Preservation Plan Order  
11 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)

12 Dear Magistrate Judge van Keulen:

13 Pursuant to Your Honor's August 5, 2022 Redaction Order (Dkt. 658) regarding Your Honor's  
14 August 5, 2022 Order on (1) Google's Administrative Motions for Extension/Clarification of  
15 Preservation Plan Order; and (2) *Calhoun* Plaintiffs' Administrative Motion for Clarification of the  
16 Preservation Plan Order (Dkt. 657), Plaintiffs and Google LLC ("Google") jointly submit this  
17 statement.  
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Google respectfully seeks to seal the following portions of the August 5, 2022 Order on (1) Google’s Administrative Motions for Extension/Clarification of the Preservation Plan Orders and (2) *Calhoun* Plaintiffs’ Motion for Clarification of Preservation Plan Order (“Order”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including various types of Google’s internal projects, data signals, and logs, and their proprietary functionalities, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Order:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
August 5, 2022 Order on (1) Google’s Administrative Motions for Extension/Clarification of the Preservation Plan Orders and (2) <i>Calhoun</i> Plaintiffs’ Motion for Clarification of Preservation Plan Order	Portions highlighted in blue at:  Pages 4:5, 4:8-9, 5:3, 5:15, 6:3-5, 6:11, 6:13, 6:17, 7:3, 7:5-6, 7:11, 8:5, 8:7, 9:2, 9:14, 10:1-4, 10:12-14, 11:1-3, 11:16-17, 12:1-2, 12:6-7, 12:20, 12:23-24, 13:8, 13:11-12, 13:14-15	Google

The parties conferred on the proposed redactions to the Order. Plaintiffs take no position and do not oppose sealing the proposed redactions.

#### **I. LEGAL STANDARD**

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might

1 harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue  
 2 constitutes “competitively sensitive information,” such as “confidential research, development, or  
 3 commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at  
 4 \*4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.  
 5 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of  
 6 information, including, but not limited to, trade secrets or other confidential research, development, or  
 7 commercial information”).

## 8 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”** 9 **STANDARD AND SHOULD ALL BE SEALED**

10 Courts have repeatedly found it appropriate to seal documents that contain “business  
 11 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good  
 12 cause to seal is shown when a party seeks to seal materials that “contain[ ] confidential information  
 13 about the operation of [the party’s] products and that public disclosure could harm [the party] by  
 14 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014  
 15 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive  
 16 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*  
 17 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at \*2 (N.D. Cal. Mar. 4, 2015) (information  
 18 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be  
 19 used to the company’s competitive disadvantage”) (citation omitted).

20 Here, the Order comprises confidential information regarding highly sensitive features of  
 21 Google’s internal systems and operations that Google does not share publicly. Specifically, this  
 22 information provides details related to internal projects, data signals, and logs, and their proprietary  
 23 functionalities, as well as internal metrics. Such information reveals Google’s internal strategies,  
 24 system designs, and business practices for operating and maintaining many of its important services  
 25 while complying with legal and privacy obligations.

26 Public disclosure of the above-listed information would harm Google’s competitive standing it  
 27 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of  
 28 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is

1 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-  
2 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain  
3 sensitive business information related to Google’s processes and policies to ensure the integrity and  
4 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-  
5 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because  
6 “disclosure would harm their competitive standing by giving competitors insight they do not have”);  
7 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at \*8 (W.D. Wash. May 8, 2013) (granting  
8 motion to seal as to “internal research results that disclose statistical coding that is not publicly  
9 available”).

10 Moreover, if publicly disclosed, malicious actors may use such information to seek to  
11 compromise Google’s internal systems and data structures. Google would be placed at an increased  
12 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*  
13 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at \*3 (N.D. Cal. Sept. 25, 2013) (sealing “material  
14 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”  
15 because if made public, it “could lead to a breach in the security of the Gmail system”). The security  
16 threat is an additional reason for this Court to seal the identified information. The information Google  
17 seeks to redact, internal projects, data signals, and logs, and their proprietary functionalities, as well as  
18 internal metrics, is the minimal amount of information needed to protect its internal systems and  
19 operations from being exposed to not only its competitors but also to nefarious actors who may  
20 improperly seek access to and disrupt these systems and operations. The “good cause” rather than the  
21 “compelling reasons” standard should apply but under either standard, Google’s sealing request is  
22 warranted.

### 23 **III. CONCLUSION**

24 For the foregoing reasons, Google respectfully requests that the Court seal the identified portions  
25 of the Order.

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1 Respectfully,

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/s/ Ryan J. McGee

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**ATTESTATION OF CONCURRENCE**

I am the ECF user whose ID and password are being used to file this Joint Submission.  
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has  
concurred in the filing of this document.

Dated: August 15, 2022

By /s/ Andrew H. Schapiro  
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*Counsel on behalf of Google LLC*